IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 5041 of 2006

Date of Decision: 04.12.2006

Umesh Bala and another ...Petitioners

Versus

State of Haryana and others ...Respondents

Coram: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rajive Atma Ram, Senior Advocate,
with Mr. Hem Raj Mittal, Advocate.
Mr. R.S. Bains, Advocate
Mr. S.N. Yadav, Advocate.
Mr. Jai Vir Yadav, Advocate.
Mr. Girish Agnihotri, Advocate.
Mr. H.R. Mittal, Advocate.
Mr. Vijay K. Jindal, Advocate.
Mr. Gurmeet Singh, Advocate.
Mr. Sanjeev Gupta, Advocate.
Mr. Satinder Khanna, Advocate.
Mr. R.K. Gupta, Advocate.
Mr. Kuldip Singh, Advocate.
Mr. Narender Hooda, Advocate.
Mr. Ashwani Pakshi, Advocate.
Mr. R.N. Lohan, Advocate.
Mr. Ramender Chauhan, Advocate.
Mr. V.K. Bali, Advocate.
Mr. S.S. Sodhi, Advocate.
for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

M.M. KUMAR, J.

This order shall dispose of 24 writ petitions as common question of law and facts have been raised (for details see footnote at the end of this judgement). For understanding the contour of controversy, the facts are being referred from C.W.P. No. 5041 of 2006.

Both the petitioners in C.W.P. No. 5041 of 2006 have been working in the Haryana Police as lady constable in Gurgaon Range. Petitioner No. 1 had joined as constable on 5.6.1982. She qualified B-I List Test in January, 1986. She also qualified C-I List Test in September, 1986 and was promoted as Head-Constable on 14.9.1988. She was detailed for Intermediate School Course in 1991 and was promoted as Assistant Sub-Inspector (ASI) on 9.9.1992 and confirmed as such on 30.1.1999. She was further detailed for Upper School Course in 1998 and was promoted as Sub-Inspector on 11.9.2001. She was still further promoted as Inspector on 9.9.2004.

Petitioner No. 2 had joined as Constable on 9.11.1981. She was detailed for B-I List Test which she qualified in January, 1987. She also qualified C-I List Test in March, 1988 and was promoted to the post of Head Constable on 14.9.1988. She was further detailed for Intermediate School Course in 1993 and was promoted as Assistant Sub-Inspector (ASI) on 12.11.1996 and was confirmed as such on 30.1.1999. She appeared for Upper School Course in 1999, which is a requirement for promotion to the post of Sub-Inspector which she qualified and was promoted as Sub-

Inspector on 11.9.2001. She has further been promoted as Inspector on 6.10.2004.

The claim made by them is that there was joint cadre of male and female police personnel of all ranks in Haryana Police, which was separated by issuance of instructions dated 11.4.1996. The original strength of the female cadre of Haryana Police was 1 Inspector, 8 Sub-Inspectors, 17 Assistant Sub-Inspectors and 39 Head Constables. On 20.7.2001, the cadre strength of female police was increased. As a consequence, 3 posts of Inspectors, 12 posts of Sub-Inspectors, 19 posts of Assistant Sub-Inspectors and 36 posts of Head Constables were added to the existing cadre strength. Accordingly, the total strength of female cadre after 20.7.2001 was 4 Inspectors, 20 Sub-Inspectors, 36 Assistant Sub-Inspectors and 75 Head Constables. On increase of cadre strength, 4 Women Police Stations including one Crime Against Woman Cell were set up.

It is the further case of the petitioner that in the year 2003, the National Commission for Women recommended the creation of Mahila Desks in each Police Station and the creation of Women Cells in every districts. After ascertaining the views of various authorities, a meeting was held by the National Commission for Women between Chief Secretary to Government of Haryana and various other higher officers on 24.4.2003. It was decided that each Police Station must have a Mahila Desk manned by a female police official. A copy of the minutes of the meeting dated 24.4.2003 have been placed on record (Annexure P-4). In pursuance of the decision

taken in the meeting dated 24.4.2003, the Director General of Police, Haryana issued direction for appropriate action in general and specifically directed setting up of Mahila Desks in each police station. On account of the paucity of posts for female police, some difficulties were stated to have been experienced in creation of Mahila Desks and Women Cell/Female Police Station as per the decision taken in the meeting held on 24.4.2003.

On 11.3.2004 (Annexure P-3), the Director General of Police, Haryana issued orders converting various posts from male cadre to female cadre. Such as 15 posts of Inspectors, 40 posts of Sub-Inspectors, 80 posts of Assistant Sub-Inspectors and 160 posts of Head Constables were converted from male cadre to female cadre. On the basis of the cadre strength of the female police, the petitioners were promoted as Inspector on ad hoc basis vide orders dated 9.9.2004 and 6.10.2004 respectively. It is pertinent to mention that after the conversion of various level posts from male cadre to female cadre, the increase cadre strength of female police was distributed amongst 4 districts. As per the table given below:-

	Gurgaon	Faridabad	Rewari	Narnaul
Inspector	1	1	1	1
Sub Inspector	3	3	2	2
Assistant Sub Inspector	6	6	4	6
Head Constable	14	14	6	6

The Director General of Police, Haryana rescinded the order dated 11.3.2004 (Annexure P-3) and has ordered the restoration

of earlier sanction strength of female police. There are various reasons discernible from the impugned order dated 10.1.2005 (Annexure P-5), which may be summed up as under:-

a) The conversion of various posts from male cadre was unauthorisedly converted to female cadre without obtaining requisite prior approval of the State Government;

b) Additional strength of police cadre of female has been created by unauthorized conversion of posts without any justification, administrative consideration or public interest;

c) The aforementioned diversion of posts belonging to male police to female police has caused heartburning because women police personnel got quicker and out of turn promotions at the cost of their male counterparts affecting moral of male police.

On the basis of the aforementioned reasoning, the Director General of Police reached a conclusion that women police personnel who have been irregularly promoted against the posts allocated to male police personnel were to be reverted after issuing them the requisite show cause notice. Accordingly, a show cause notice was issued to all. A copy of one such show cause notice dated 1.3.2006 (Annexure P-6), issued to petitioner No. 2 has been placed on record. The show cause notice points out that the cadre of women

police of the State police is separate cadre from male cadre. It further points out that in the year 2003 there were only 4 sanctioned posts of lady Inspectors. Those posts were allocated one each to Ambala Range, Hissar Range, Gurgaon Range and Rohtak Range, Three posts of Inspectors have already been filled up in the year 2004 and only one vacancy on the post of Inspector was available. It was alleged that the petitioners were promoted as Inspector on the posts created in the Haryana State Industrial Security Force (for brevity, 'the HSISF') under the Haryana State Industrial Security Force Act, 2003 (for brevity, 'the 2003 Act') and 15 posts wrongly converted from the male cadre to women cadre in the Haryana Police without the permission of the Government by the Director General of Police at his own level and, therefore, once 15 posts of Inspector created by diverting posts from male cadre to female cadre are withdrawn then promotion of the petitioners was stated to be illegal because even otherwise, the petitioners did not possess requisite experience as required under Rule 13.14(2) of the Punjab Police Rules, 1934 (as applicable to Haryana) (for brevity, 'the Rules'). It was further stated that the 2003 Act was never enforced and no posts could have been filled up.

In the written statement filed by the respondents-State, the stand taken is that the petitioners have been wrongly promoted as Inspectors on ad hoc and fortuitous basis after clubbing posts of Inspector, which were sanctioned for the HSISF and 15 posts which were illegally converted from male cadre to female cadre by order

dated 11.3.2004, without obtaining any prior approval of the Government. In respect of the 2003 Act, it has been stated that the 2003 Act was never enforced by issuing any notification notifying the date of its enforcement as required by Section 1(3) of the 2003 Act. Accordingly, the Director General of Police has no authority to fill up the posts of the HSISF. It has further been pointed out that no one was appointed in accordance with the provisions of the 2003 Act. Like-wise, the order converting various posts from male cadre to female cadre was issued without prior approval of the State Government. As both the cadres are separate with separate sanction strength, it has been asserted that the Director General of Police has no authority to convert one cadre post to the other. The respondents have also placed reliance on the orders of promotion by submitting that the petitioners were promoted on purely ad hoc and fortuitous basis with a stipulation that they were not to have any right to the posts and were liable to be reverted at any time without any notice. Even otherwise, these officers did not fulfil the requirement/qualification for promotion as Inspector as per provisions of the Rules. A copy each of the promotion orders have been placed on record as Annexures R-2 and R-3. The order dated 11.3.2004, converting various posts in the male police cadre has already been withdrawn in accordance with law and the petitioners have been reverted as no posts of lady Inspector is available. It has been pointed out that a large number of male police personnel who joined with the petitioners as Head Constable or Assistant Sub-

Inspectors have been continuing as such. A comparison has been made by the respondents by juxtaposing the cases of the male police personnel with that of the petitioners, with the help of a table which expresses a bird eye view and the same is as under:-

Sr. No.	Particulars	Petitioners		Male counterpart	
		Umesh Bala 202/G	Prem Devi 70/NNL	ASI Chander Pal, 273/FBD	ASI Ram Kumar 916/FBD
1.	Date of enlistment	05.06.82	09.11.81	17.03.77	04.05.74
2.	Name brought on List C-1	9/86	4/88	9/86	4/88
3.	Date of promotion as HC	14.09.88	14.09.88	16.05.90	18.09.95
4.	Date of confirma-tion as HC	31.01.91	31.01.91	31.01.03	31.01.03
5.	'D' List	09.11.96	09.11.96	22.03.03	03.04.02
6.	Date of promotion as ASI	12.11.96	12.11.96	23.12.2002	09.04.2003
7.	Date of confirma-tion as ASI	31.01.99	31.01.99	Awaiting	Awaiting
8.	'E' List	11.09.01	11.09.01	Awaiting	Awaiting
9.	Date of promotion as SI	11.09.01	11.09.01	Awaiting	Awaiting

It has further been pointed out that both the petitioners were promoted as Sub-Inspectors on 11.0.2001 and within three year, they were further promoted on the post of Inspector which contravenes Rule 13.14(2) of the Rules. The Rule which

categorically provides that no Sub-Inspector is to be considered for promotion as Inspector unless he has atleast eight years' approved service as an upper subordinate, of which at least five years were required to be in the rank of Sub-Inspector, and he is required to be thoroughly efficient and competent to hold charge of a police station of first class importance. It is obvious that petitioners did not have service experience of five years as Sub-Inspector as per the requirement of the Rule. They did not ever hold charge of police station as Sub Inspector and could not be considered competent to hold charge of a police station as Inspector/SHO.

When the matter came up for consideration on 4.7.2006, we have directed the respondents to maintain status quo as existed on that date. Thereafter, the matter was considered on 26.7.2006 and following clarifications were required to be furnished by the respondents-State :-

> "(a) Order dated 11.3.2004 diverting some posts in the cadre of Head Constables, Assistant Sub Inspectors, Sub inspectors and Inspectors to be manned by female police personnel was issued. The issue raised is as to whether any approval of the Government was obtained and if so, the date of the approval.
>
> (b) The State shall also clarify as to how many male police personnel in the cadre of Assistant Sub Inspectors, Sub Inspectors and Inspectors are likely to be adversely affected by virtue of diverting some of the posts for

female cadre in pursuance of the instructions dated 11.3.2004 (Annexure P-3).

(c) Respondent-State should also explain as to how the judgment in the case of Iqbal Kaur and Others has been followed to create cadre for female vide order dated 11.4.1996 (Annexure P-3), a copy of which has been taken on record as mark 'A'. The respondent-State may place on record Pyramidical organisational structure of the department. In other words, it may be explained as to how many posts of Head Constables, Assistant Sub Inspectors and Inspectors have been created. Whether the same is considered with the pyramidical order prevalent in the department.

The needful shall be done within 10 days with copies in advance to the learned counsel for the petitioners.

List the matter for hearing on 9.8.2006. A copy of this order be given to the learned State Counsel under the signature of the Court Secretary."

In response to the queries made by us, Shri B.S. Sandhu, Inspector General of Police, Haryana, filed an affidavit to the aforementioned clauses a, b and c, their reply reads as under:-

" (a) That in reference to para (a), it is submitted that the then DGP did not take any approval of the State Government before converting some posts viz.

15/Inspecotrs, 42/Sub Inspectors, 84/ASIs and 160/Head Constables from male cadre to female cadre. Only copy of order dated 11.3.2004 was endorsed to the State Government for information and necessary action in routine manner. However, it is clarified that no specific approval was also sought from the Government by the then DGP.

It is pertinent to mention here that rule 1.3. of Punjab Police Rules clearly says that the Inspector General may with the approval of the State Government add such other cadres from time to time as the need arise.

(b) That in response to point (b) it is submitted that following male cadres official were adversely affected due to wrongful and unlawful conversion of their posts to that of female cadre officials.:-

Sr. No.	Name of Post	No. of posts converted from male cadre to Female cadre	Affected male officials
1.	Inspector	15	-
2.	Sub Inspector	42	15
3.	ASI	84	57(42+15)
4.	Head Constable	160	141(84+57)
5.	Constable	-	301(160+141)

From the above table it is crystal clear that large number of officials of the male cadre were adversely affected due to wrongful conversion.

It is pertinent to mention here that some of the affected male cadre officials had filed a CWP No.14612 of 2004 with the prayer for quashing the impugned executive order dated 11.3.2004 whereby the promotional posts for Lay/HCs, ASIs, Sis and Inspector have increased without any legal basis and reservation in promotion has been introduced directly without any legal basis or order of Government, thereby reducing the promotional avenue of the petitioners in violation of the settled law.

The aforesaid writ petiton was disposed of by the division Bench of this Hon'ble Court vide order dated 06.09.2005 which reads as under:.

> "Mr. Sidhu states that the Government itself is taking a fresh look at the impugned order dated 11.3.2004, Annexure P-2. We accordingly disposed of this petition as infructuous and request the respondents to look into the matter and take a final decision either ways within a period of two months from the date that a certified copy of this order is supplied to them" (Copy of judgment dated 06.09.2005 is attached as Annexure R-1).

Accordingly on 10.01.2006 it was decided to withdraw the wrongful orders dated 11.3.2004 of conversion of male cadre posts to female cadre as the

same was passed without prior approval of the State Government and accordingly detailed speaking order dated 10.01.2006 was passed for the withdrawal of order dated 11.3.2004 (copy of the order dated 10.01.2006 is attached herewith as Annexure R-2).

(c) That in reply to point (c) it is submitted that lady constables cadre is a separate cadre and standing instructions for holding B-1 List test of lady constable for deputing them in lower school course was issued vide memo No.1095-98/T-2, dated 17.2.84, vide instruction No.14401-30/B-3, dated 17.02.84, Again in the year 1993 vide instruction No.14401-30/B-3, dated 9.7.2003, the earlier instructions regarding lady constables, were withdrawn. Vide instructions dated 04.11.93 and 26.04.94 it was first time decided that male and female police personnel of all ranks constitute one single joint cadre and a single seniority list of constable/Head Constable and ASI's etc. of both the male and female police personnel be ordered to be maintained. It was also decided that the benefits which the lady police officials had derived by virtue of female police being treated as a separate cadre and which were not in consonance with the provisions of police rules are to be taken and their seniority was refixed. Likewise, the lady police officials

who have suffered on that account have also to be restored to their correct seniority.

However, some lady officials had filed CWP No.15640 of 2004 titled Iqbal Kaur and others versus State of Haryana and challenged the instructions dated 09.07.03 vide which instructions No.1095-98/T-2, dated 17.2.84, No.10784-814/T-2, dated 23.12.87 and 85-109/T-2, dated 04.01.89 were withdrawn. Hon'ble High Court vide its judgment dated 14.08.05 ordered that the instructions issued on 09.07.93 were withdrawn by the department. Hence, the female cadre remained intact as a separate cadre. Copy of instructions No.10161-65/B-3, dated 11.04.96 is attached as Annexure R-3.

That it is also submitted that as per record of this office, no pyramidcal organizational chart is maintained. However, as per provisions laid down in PPR 2.2 there shall be one HC to every 10 Constables; one ASI to every 5 Head Constables and one SI to every 100 Constables. According to this, if it is analyzed, on the basis of the numbers of constables existed before conversion of posts of male cadre to the female cadre vide order dated 11.3.2004 there would have been 37/Head Constables, 8/ASIs and 4/Sis for 368 constables. Whereas the strength of women police officials prior to the conversion of male cadre to female

> cadre in the year 2004 was 4/Inspectors, 20/SIs, 36/ASIs, 75/Head Constables and 368/Constables. It clearly indicate that women police officials were already in excess as per norms prescribed in rule 2.2 of Punjab Police Rules. Though no provisions have been fixed for creation of post of Inspectors in the rules, at the most one post of Inspector could be provided for female police officials. Moreover, it is pertinent to mention here that at present, after withdrawal of the wrongful orders of conversion and creation of new posts from time to time, the existing strength of Lady Police officials is 4/Inspectors, 20/Sis, 36/ASIs, 75/Head Constables and 748/Constables which is also on higher side in view of the provisions of rule 2.2.of PPR."

Mr. Rajive Atma Ram, Mr. Kamlesh Kumar, Mr. Jaivir Yadav, Mr. Girish Agnihotri, Mr. S.N. Yadav and Mr. R.S. Bains, learned counsels for the petitioners have argued that there is ample power conferred on the Director General of Police by Section 12 of the Police Act, 1861 (for brevity, 'the Act'), to frame Rules and Orders in relation to the organization, classification and distribution of the police force including the place where the member of the police force were to reside. It also confers on the Director General of Police the power to classify the duties to be performed by them which is of course subject to approval of the State Government.

Learned counsel have also contended that Rule 1.3 of the Rules also confer upon the Director General of Police wide administrative powers to divide administrative establishment and other organization. He has also been given the power subject to the approval of the State Government to add such other cadres from time to time as per the need of the vacancies. It has been pointed out that in Rule 1.3 of the Rules the use of expression 'with the approval of the State Government' would necessarily mean prior approval but the expression has to be construed in the light of such expression employed in Section 12 of the Act, which uses the expression 'subject to the approval of the State Government'. The argument further is that any order passed by the Director General of Police by virtue of Section 12 of the Act could be approved by the State Government at a later stage. In other words, the order can come into force and operate even without the approval of the State Government, which could be accorded later on. In support of their submissions, learned counsel have placed reliance on paras 4 to 6 of the judgment of Hon'ble the Supreme Court in the case of **U.P. Avas Evam Vikas Parishad v. Friends Co-op. Housing Society Ltd., AIR 1996 SC 114**. Reliance has also been placed on para 37, 38, 39 to 40 of the judgment of Hon'ble the Supreme Court in the case of **High Court Judicature for Rajasthan v. P.P. Singh, (2003) 4 Supreme Court Cases 239**, to raise an argument that when provision is made subject to approval of the authority then any action taken would hold good. Reliance has also been placed on a Full Bench judgment of the Assam and

Nagaland High Court in the case of **U.G. Koring v. State, AIR 1971 A. & N. 129**.

Mr. Rajive Atma Ram has also argued that a perusal of order dated 11.3.2003 (Annexure P-3) would show that the Director General of Police had endorsed a communication to the Government and it was up to the Government to approve or to disapprove the addition and conversion of male cadre posts into female cadre posts. He has submitted that in any case the petitioners now fulfill the requirement of Rule 13.14(2) of the Rules, inasmuch as, they have acquired requisite experience of five years of working on the post of Sub Inspector.

On the aforementioned basis, it is sought to be submitted that the order dated 11.3.2004 issued by the Director General of Police diverting the various posts from male cadre to female cadre were to hold good and no prior approval of the State Government was required. It has been submitted that the proper interpretation of Section 12 of the Act read with Rule 1.3 of the Rules would be only one that no prior approval was required to be accorded and it was to continue till its disapproval by the Government, which has never been done. Learned counsel have argued that till date there is no disapproval accorded by the Government. The withdrawal of the aforementioned order by the Director General of Police, vide order dated 10.1.2006 (Annexure P-5), is bad in the eyes of law as disapproval can only be made by the Government. In that regard, learned counsel has made a reference to the original record showing

the correspondence between the Director General of Police and the State which eventually culminated in directing the Director General of Police vide letter dated 17.1.2006 (at page 325 of Correspondence File) to proceed at its own level by withdrawing the order dated 11.3.2004.

Learned counsel have also attacked the impugned order dated 10.1.2006 by arguing that the principles of natural justice have not been followed, inasmuch as, the decision to withdraw the letter dated 11.3.2004 (Annexure P-3), had already been taken by the Government and the issuance of show cause was a mere formality. He has further submitted that the reasons disclosed in the written statement are entirely different then those which have been disclosed in the impugned order and these reasons even otherwise are fallacious. According to the learned counsel, there are main four reasons disclosed in the impugned order, namely, that (a) the female police cadre was created by unauthorized conversion of posts; (b) without any justification; (c) without any administrative exigency; and (d) public interest. It has been submitted that there was complete justification for conversion of posts from male cadre to female cadre as is evident from the perusal of the minutes of the meeting (Anneuxre P-1) held between the Chief Secretary, Haryana and the team of the National Commission for Woman (Dr. Poornma Advani, Chair Person). It has further been submitted that there was full application of mind and administrative exigencies were taken into account which would have served the public better. In order to boost

the confidence of female citizens to approach the police station, the creation of female desks in the police station or Women Cell or female police station were in larger public interest, therefore, learned counsel has submitted that none of the reasons given in the impugned order would be sustainable. It has also been argued that one post was still vacant and the senior most female Sub-Inspector should have been retained as Inspector. However, no exercise to that effect appears to have been carried by the respondents resulting into throwing the baby with the bath water. Another argument raised is that reservation would available to the member of Scheduled Caste even without any addition to the female cadre. This submission has been made on in respect of the petitioner in CWP No. 11300 of 2006 who belongs to reserved category.

Mr. Harish Rathee, learned State counsel has, however, submitted that the Director General of Police was not competent without prior approval of the State Government to convert the post from male cadre to female cadre. He has argued that such diversion of post without the prior approval of the Government was impermissible even on the interpretation of Section 12 of the Act read with Rule 1.3 of the Rules and once no approval has been obtained then the question of rejecting the request of the Director General of Police would not arise. He has then referred to the necessity of creating the women cadre by submitting that the object of order may be laudable but the same has to meet the requirements of law. He has then argued that at the cost of their male counter parts the Director General of

Police could not have on his own converted the post from male cadre Police Officers/officials to that of female cadre police Officers/officials. According to the learned State counsel such a conversion involves policy matters which have to be taken only at the level of the Government. He has then submitted that the judgment of Hon'ble the Supreme Court in the case of U.P. Avas Evam Vikas Parishad (supra) on which reliance has been placed by the counsel for the petitioners, is entirely different and is not applicable to the facts of the present case. In that judgment, Hon'ble the Supreme Court was considering the provisions of Section 59(1)(a) of the U.P. Urban Planning and Development Act, 1973, and the language of the Section is entirely different than Section 12 of the Act or Rule 1.3 of the Rules.

After hearing learned counsel we are of the considered view that the question which needs determination by us is as to (a) whether the approval of the State Government was required to be obtained before passing the order dated 11.3.2004 (Annexure P.3) and consequential promotion given to the petitioners vide order dated 9.9.2004 (Annexure P.4) was sustainable in the eyes of law. Another question is (b) Whether withdrawal of the afore-mentioned orders by the impugned order dated 10.1.2006 (Annexure P.5) is liable to be upheld.

Before proceeding further it would be appropriate to make reference to the provisions of Section 12 of the Act and Rule 1.3 of the Rules, which read as under:

Section 12 of the Act:

"12. Power of Inspector General to make rules.- The Inspector General of Police may, from time to time, subject to the approval of the State Government, frame such orders and rules as he shall deem expedient relative to the organisation, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police force as the Inspector General shall, from time to time, deem expedient for preventing abuse or neglect of duty and for rendering such force efficient in the discharge of its duties."

Rule 1.3 of the Rules:

"1.3. General Police, District – divisions of. – The Provincial Police general district is divided into administrative establishments; a Training School (including the Provincial Finger Print Bureau); a Criminal Investigation Department, and District Police Establishments. The Inspector General may, with the approval of the state Government, add such other caders from time to time as the need may arise. The Railway Police general district, is divided into a Central

Investigating Agency, and such number of sub-divisions as the Provincial Government may authorize from time to time."

According to the provisions of Section 12 of the Act, the Inspector General of Police (now known as Director General of Police) is empowered to frame such orders and rules which he may deem expedient relating to the organisation, classification and distribution of the police force etc. Such rules or orders are to be framed subject to the approval of the State Government. However, Rule 1.3 of the Rules postulate that the Director General of Police may with the approval of the State Government add such other cadres from time to time as the need may arise. The use of expression in Section 12 of the Act i.e. 'subject to the approval of the State Government' and use different expression in Rule 1.3 of the Rules, namely, 'with the approval of the State Government', would necessarily mean that the approval of the State Government is necessary. The further question as to whether the approval is required to be obtained first or later would pale into insignificance because no approval of the State Government has been taken before ordering the conversion by the Director General of Police on 11.3.2004, of various posts from male cadre to female cadre.

The afore-mentioned Section 12 of the Act came up for consideration before Hon'ble the Supreme Court in the case of **Superintendent of Police v. R.K. Tomalsana Singh, AIR 1984 SC 535**. In that case, Hon'ble the Supreme Court was considering the

rules framed by the Inspector General of Police Manipur, who was also holding the office of Chief Commissioner, Manipur. He passed orders by adopting the rules included in the Assam Police Manual, Part I-V to Manipur Police. However, no consent of the State Government of Manipur was obtained. The argument that the Inspector General of Police, Manipur, who was also the Chief Commissioner, would be deemed to have accorded approval, was rejected by holding as under:

> "…. This contention did not find favour with the learned Commissioner and in our opinion rightly. A bare reading of Section 12 of the Police Act, 1861 shows that the power to make rules and issue orders as may be deemed expedient relating to the organisation, classification and distribution of Police Force etc., is conferred on the Inspector General of Police subject to the approval of the State Government. The power is conferred by the statute on a statutory authority called Inspector General of Police and the power is hedged in with a condition that it can be exercised subject to the approval of the State Government. It must at once be confessed that the approval of the State Government was not obtained and it is futile to contend that as the order issuing authority was simultaneously holding office of Chief Commissioner of Manipur State, the order dated July 27, 1951 would be deemed to have been issued with the

approval of the State Government. ....." (Emphasis added)

Accordingly it was held that the delinquent officer should have been dealt with in accordance with the rules which were prevalent and not by the rules which were extended by the order of the Inspector General of Police, Manipur.

In the present case also, no approval of the State Government has been obtained and the so called communication with endorsement dated 11.3.2003 (P-3) sent to the State Government by the Director General of Police would not cut any ice because no request for approval was made. In any case, the State Government has not accorded approval at any stage and at any time. Therefore, the orders dated 11.3.2004 (Annexure P.3) and 9.9.2004 (Annexure P.4) converting the post from male cadre to female cadre at the level of Inspectors, Sub Inspectors, Assistant Sub Inspectors and Head Constables have been rightly withdrawn and consequentially promotions given to the petitioners has also been correctly cancelled by the impugned order. Moreover, Rule 1.3 of the Rules specifically require that creation of any cadre by the Director General of Police has to be with the approval of the State Government. The aforementioned use of expression 'with the approval of the State Government' admittedly would not present any difficulty as it is admitted case of the petitioners that when such an expression is used then prior approval is necessary. In fact, paras 3, 4, 5, and 6 of the judgment of Hon'ble the Supreme Court in the case of U.P. Avas

Evam Vikas Parishad (supra) support the aforementioned contention. It is well settled that there is no estoppel against the statute. Once the requirement of seeking approval from the State Government has remained unsatisfied then the order dated 11.3.2004 would not carry any sanction of law and it is a still born order. As a consequence the promotions given to the petitioner would also suffer from the same legal malady as those orders are without any authority of law.

Moreover, the rights of police officers/officials in the male cadre have been adversely effected by the diversion of their posts to female cadres. As a consequence of conversion, the posts have been given to female cadre by ignoring the claim of male officers/officials who had legitimate expectation of consideration of their cases for promotion which is defeated by violating the principles of natural justice.

The argument that principles of natural justice have not been violated while passing the impugned order dated 10.1.2006 would not survive for consideration as it is well settled that if by exercise of jurisdiction under Article 226 of the Constitution an order is quashed on the ground of breach of natural justice then the Court is not bound to exercise such jurisdiction if it would result into restoration of an earlier order of the Government which had also been passed in breach of the principles of natural justice or which was otherwise illegal. The afore-mentioned proposition came up for consideration before Hon'ble the Supreme Court in the case of **Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828,** which is a clear authority for the proposition that it is not

always necessary for the Court to strike down an order merely because it has been passed against the petitioner in breach of natural justice. A pointed question was framed and considered by Hon'ble the Supreme Court in the case of **M.C. Mehta v. Union of India, (1999) 6 SCC 237,** which is as under:

> "(1) Whether this Court in exercise of powers under Article 32 (or the High Courts generally under Article 226) is bound to declare an order of the Government passed in breach of the principles of natural justice as void or whether the Court can refuse to grant relief on the ground that the facts of the case do not justify exercise of discretion to interfere or because of de facto prejudice has not been shown?
>
> (2) Whether this Court is not bound under Article 32 (or the High Courts under Article 226) to quash an order of the Government on the ground of breach of natural justice if such an action will result in the restoration of an earlier order of the Government which was also passed in breach of natural justice or which was otherwise illegal?"

After referring to its earlier judgment in the case of Gadde Venkateswara Rao (supra), their Lordships observed as under:

> " The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226

refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law."

Apart from dealing with the breach of principles of natural justice, their Lordships also considered the question whether the interference of the Court under Article 226 of the Constitution would result into restoration of another order which was not legal. In that regard, reference has been made to the case of **Mohd. Swalpleh v. IIIrd ADJ, (1998) 1 SCC 40**. The view of their Lordship is discernible from para 18 of the judgment and the same reads as under:

" We would next refer to another case, where though there was no breach of the principles of natural justice, this Court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In Mohd. Swalleh v. IIIrd ADJ (1988) 1 SCC 40 which arose under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of Section 43(2)(rr) of the Act. The District Court entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The

> tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this Court accepted that though no appeal lay to the District Court, the refusal of the High Court to set aside the order of the district Judge was correct as that would have restored the order of the prescribed authority, which was illegal."

Once the order dated 11.3.2004 (Annexure P.3) and order dated 9.9.2004 (Annexure P.4) have been held to be illegal for want of approval by the Government then exercise of jurisdiction by this Court by quashing order dated 10.1.2006 (Annexure P.5) would result into restoration of those orders. Therefore, exercise of jurisdiction in these circumstances will not be warranted.

The argument of the learned counsels for the petitioners that one post of Inspector has remained available and the senior-most Sub Inspector should have been considered, would not require any detailed consideration because under Rule 13.14(2) of the Rules, certain conditions are required to be satisfied. It has not been pointed out that any of the petitioner or the senior-most amongst them satisfy the requirement of the aforementioned Rules. It is appropriate to mention that in order to be considered for promotion for the post of Inspector, Rule 13.14(2) of the Rules postulate that such a person should have at least 8 years' approved service as an upper subordinate

of which atleast five years shall be in the rank of Sub-Inspector. It further requires that he should be thoroughly competent and efficient to hold charge of a police station of first class importance. The aforementioned attributes were required to be pleaded which has not been done in respect of any of the petitioners. Therefore, we have no hesitation to reject the aforementioned argument. The other argument that there was full justification for conversion of posts from male cadre to female cadre or that the reasons given in the written statement and the impugned orders are different, would also not survive for consideration because of the view taken by us that the approval of the State Government before conversion of the posts from male cadre to female cadre was required. Therefore, we do not find any substance in the aforementioned argument raised on behalf of the petitioners.

For the reasons recorded above, these petitions[1] fail and are dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)

December 4, 2006
JUDGE

okg/Pkapoor

[1] 1. Umesh Bala and another v. State of Haryana and others (C.W.P. No. 5041 of 2006);
2. Asha Rani v. State of Haryana and others (C.W.P. No. 12480 of 2006);
3. Sushila Devi v. State of Haryana and others (C.W.P. No. 10252 of 2006);
4. Shakuntla Devi v. State of Haryana and others (C.W.P. No. 9931 of 2006);
5. Mithelesh Kumari v. State of Haryana and others (C.W.P. No. 9956 of 206);
6. Kamlesh Kumari and others v. State of Haryana and others (C.W.P. No. 11301 of 206);
7. Gurdev Kaur and another v. State of Haryana and others (C.W.P. No. 5677 of 2006);
8. Roshni Devi v. State of Haryana and others (C.W.P. No. 9883 of 206);
9. Jagwanti and others v. State of Haryana and others (C.W.P. No. 11036 of 2006);
10. Raj Rani and others v. State of Haryana and others (C.W.P. No. 11041 of 2006);
11. Urmila Devi and others v. State of Haryana and others (C.W.P. No. 11035 of 2006);
12. Santosh and others v. State of Haryana and others (C.W.P. No. 12188 of 2006);
13. Shobha Rani v. State of Haryana and others (C.W.P. No. 12186 of 2006);
14. Bimla Devi and others v. State of Haryana and others (C.W.P. No. 5365 of 2006);
15. Kamlesh v. State of Haryana and others (C.W.P. No. 12288 of 2006);
16. Kamlesh Devi and others v. State of Haryana and others (C.W.P. No. 11300 of 2006);
17. Hira Rani v. State of Haryana and others (C.W.P. No. 11491 of 206);
18. Amarjeet v. State of Haryana and others (C.W.P. No. 12324 of 2006);
19. Hemlata v. State of Haryana and others (C.W.P. No. 12411 of 2006);
20. Sheela Devi and another v. State of Haryana and others (C.W.P. No. 12414 of 2006);
21. Veena Rani v. State of Haryana and others (C.W.P. No. 12623 of 2006);
22. Raj Rani v. State of Haryana and others (C.W.P. No. 12638 of 206);
23. Ghanshyam Devi v. State of Haryana and others (C.W.P. No. 12743 of 2006); and
24. Ram Dulari v. State of Haryana and others (C.W.P. No. 12612 of 2006).

FIT FOR INDEXING